

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

JESSICA JONES et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC et al.,

Defendants.

Civ. Action No. 2:20-cv-02892

**CORRECTED DECLARATION OF STEVEN J. KAISER IN SUPPORT OF
DEFENDANTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
EXCLUDE TESTIMONY OF PLAINTIFFS' PROFFERED EXPERT JEN MAKI, PHD,
REPLACING ECF 447**

I, Steven J. Kaiser, declare as follows:

1. I am counsel to Varsity Brands, LLC; Varsity Spirit, LLC; Varsity Spirit Fashions & Supplies, LLC; Charlesbank Capital Partners, LLC; and Bain Capital Private Equity LP in this matter.
2. Defendants filed the public version of their motion and supporting papers with the Court at 11:57 pm CT on February 10, 2023. The sealed version was timestamped shortly thereafter, at 12:22 am CT on February 11.
3. The public filings specifically referenced certain exhibits, including the reports of Plaintiffs' and Defendants' proffered experts, and contained citations to specific portions of depositions that one or more parties had designated as confidential or highly confidential under the protective order. As a result, Defendants were required to file these exhibits under seal and to redact the designated testimony from the public version of the filing. Plaintiffs had in their possession all of this material at the time the public filing was made, and even cited certain

pieces of it in their own briefs filed the same day. (*See* ECF No. 384; ECF No. 387.)

4. Defendants served the sealed version on Plaintiffs at 12:07 am CT on February 11, 2023, via a secure file transfer protocol (“FTP”).

5. Because Defendants served the sealed version via FTP, they received a notification when the motion and related materials were downloaded by Plaintiffs. Defendants did not receive a download notification until Tuesday, February 14, 2023. This means that Plaintiffs did not download the materials at issue until more than three days after they were made available.

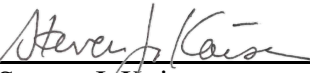
6. Plaintiffs did not bring the seven-minute transmission delay (of materials they already had in their possession and that they did not even download for three additional days) to Defendants’ attention at any time. The first time that Defendants even realized there had been a seven-minute transmission delay was when Plaintiffs filed their opposition to Defendants’ motion on March 31, 2023.

7. Attached as Exhibit A is a true and correct copy of excerpts from the transcript of the deposition of Tres LeTard.

8. Attached as Exhibit B is a true and correct copy of excerpts from the transcript of the deposition of John Newby.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 8, 2023.



Steven J. Kaiser